

ORIGINAL OPEN MEETING



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MEMORANDUM

Arizona Corporation Commission

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TO: THE COMMISSION

DOCKETED

2010 FEB 11 P 3:47

FROM: Utilities Division

FEB 11 2010

DATE: February 11, 2010

DOCKETED BY

ARIZONA CORPORATION COMMISSION
PUBLIC UTILITY CONTROL

RE: IN THE MATTER OF THE APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC FOR A LIMITED WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS RULES (A.A.C. R14-2-201 ET SEQ.) (DOCKET NO. T-03654A-10-0002)

Introduction

Level 3 Communications, LLC. ("Level 3 LLC" or the "Company") filed an application, with the Arizona Corporation Commission ("Commission") on January 6, 2010, requesting a limited waiver of the Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R12-2-801 to R12-2-806, to participate in a financing arrangement. Level 3 Financing, Inc., a subsidiary of Level 3 Communications, Inc. and the direct parent of Level 3 LLC, proposes to issue \$640 million in Senior Notes¹ and lend the net proceeds it receives in the offering of the notes to its subsidiary, Level 3 LLC, in return for an intercompany demand note. Level 3 LLC seeks approval for this refinancing transaction and its related guarantee of the notes.

Background

Level 3 Financing, Inc., is a Delaware corporation with principal offices located at 1025 Eldorado Boulevard, Broomfield, Colorado 80021, and is a wholly owned subsidiary of Level 3 Communications, Inc., a Delaware corporation. Level 3 Financing, Inc. is the direct parent of Level 3 LLC, and other subsidiaries, and is not a certificated telecommunications service provider in Arizona or elsewhere.

Level 3 LLC, a wholly owned subsidiary of Level 3 Financing, Inc., is a Delaware Limited Liability Company headquartered in Broomfield, Colorado. Level 3 LLC's customers are primarily other carriers, voice over the internet ("VoIP") providers and internet service providers ("ISPs"). Level 3 LLC is authorized by the Arizona Corporation Commission to provide facilities-based and resold local exchange, toll and access services pursuant to Decision No. 61737 issued by the Commission in Docket No. T-03654A-98-0641 on June 4, 1999.

¹ Senior debt, frequently issued in the form of Senior Notes, is debt that takes priority over other unsecured debt owed by the issuer. Senior debt has greater seniority in the issuer's capital structure than subordinated debt. In the event the issuer goes bankrupt, senior debt theoretically must be repaid before other creditors receive any payment. Senior debt is often secured by collateral on which the lender has put in place a first lien.

The Applicant's Transaction

Level 3 Financing proposes to issue \$640 million in Senior Notes and lend the net proceeds it receives along with additional cash on hand to Level 3 LLC in return for an intercompany demand note issued by Level 3 LLC in the amount of \$640 million. The funds will be used to purchase previously issued notes that were issued at the rate of 12.25 percent and are due in 2013. Level 3 LLC will also issue an unsecured guarantee of the Issuer's 10 percent Senior Notes due 2018. Level 3 LLC seeks approval from the Commission for this indebtedness and the guarantee of the notes issued by Level 3 Financing.

Level 3 LLC states in its application that participation in the financing arrangement as a guarantor will not result in a change in Level 3 LLC's management or in its day-to-day operations in Arizona nor will it adversely affect Level 3 LLC's operations in Arizona.

Staff's Analysis

In its application, Level 3 LLC states that "The financing arrangement (the proposed transaction) will enable Level 3 LLC to bring services to new markets and allow more consumers to benefit from its competitive services." Subsequently, Level 3 LLC stated in response to Staff's data request that "Level 3 (LLC) did not have any particular projects that are Arizona specific in mind when it made this statement. Rather, Level 3's financing arrangement for which it seeks approval from the Arizona Corporation Commission is intended to bolster the company's ability to compete and succeed across all of its markets and with all of its product offerings. Level 3 is always working to develop services that it believes consumers of communications services are demanding and it also works to identify markets where its products are in demand, including markets and consumers in Arizona." Staff understands, therefore, that the proposed transaction will be of indirect benefit to Arizona customers in the foreseeable future. Direct benefits to Arizona customers linked to the proposed transaction have yet to be determined.

Staff requested and received the following schedule detailing all financing approvals obtained by Level 3 LLC from the Commission since operating authority was granted.

- Decision No. 67810 (May 5, 2005): Approval granted for \$850 million. The resulting term loan was only \$730 million. No amounts are "undrawn." This term loan is no longer outstanding as it was refinanced in March 2007.
- Decision No. 68926 (August 29, 2006): Approval granted for \$700 million. The entire amount was issued. The \$700 million was comprised of \$150M Libor²+6.375%

² The London Interbank Offered Rate ("LIBOR") is one of the most popular figures used for determining short term interest rates in the world and its rate is what borrowers with top credit are able to obtain loans at. The LIBOR is also used to determine the rate that borrowers with less than perfect credit get. A very reliable borrower, such as a international conglomerate with an impeccable credit rating and financial history might be able to obtain a loan with

Floating Rate Note³, which is fully retired now and \$550M 12.25% Senior Notes, which is being refinanced.

- Decision No. 69376 (March 22, 2007): Approval granted for \$1.5 billion. \$1.25 billion was issued.
- Decision No. 69580 (May 21, 2007): Approval granted for \$1.4 billion for Credit Agreement. Approval granted for \$1 billion for Note Issuance. All amounts issued/drawn. \$1.4B refers to the term loan issued in March 2007 while the \$1B is made up of \$700M of the 8.75% Notes and \$300M Libor+3.75% Floating Rate Notes.
- Decision No. 71176 (June 30, 2009): Approval granted for \$500 million. \$280 million was drawn. The \$280M is comprised of \$220M and \$60M term loan add-on issued in 2009.

In response to a Staff Data Request regarding customer deposits, prepayments and advances held by Level 3 LLC, the Applicant responded "Level 3 (LLC) does not hold any retail customer deposits for telecommunications services in Arizona. Based on credit and payment history, Level 3 (LLC) will occasionally require deposits from wholesale or enterprise customers. Currently, Level 3 (LLC) has four wholesale or enterprise customers with billing addresses in Arizona for which it holds a deposit associated with non-regulated services."

On February 3, 2010, Level 3 LLC provided Staff with an affidavit of publication verifying public notice of its financing application. The Company published notice of its financing application in The Arizona Republic on January 22, 2010. The affidavit of publication was filed with the Commission's Docket Control on February 2, 2010. The Consumer Services Section of the Commission reported that Level 3 LLC is in Good Standing as of January 15, 2010.

Staff's Recommendations

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Staff, therefore, concludes that approval for Level 3 LLC to act as a guarantor of its parent's debt will assist in providing security for the financing and is unlikely to have any effect on Arizona customers of Level 3 LLC.

1 year term at the LIBOR with an added few points, whereas a much less preferred borrower will have their rates based on the LIBOR but they will be less favorable.

³ Floating Rate Notes ("FRNs") are bonds that have a variable coupon, equal to a money market reference rate, like LIBOR or federal funds rate, plus a spread. The spread is a rate that remains constant. Almost all FRNs have quarterly coupons, i.e. they pay out interest every three months, though counter examples do exist.

THE COMMISSION

February 11, 2010

Page 4

Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by Level 3 LLC. Staff further recommends that one copy of executed security documents be filed with Docket Control, as a compliance item in this docket, within 90 days of the decision in this matter.

A handwritten signature in black ink, appearing to read 'Steven M. Olea', written over a horizontal line.

Steven M. Olea
Director
Utilities Division

SMO:AFF:lm\CH

ORIGINATOR: Armando F. Fimbres

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 KRISTIN K. MAYES
3 Chairman

4 GARY PIERCE
5 Commissioner

6 PAUL NEWMAN
7 Commissioner

8 SANDRA D. KENNEDY
9 Commissioner

10 BOB STUMP
11 Commissioner

12 IN THE MATTER OF THE APPLICATION
13 OF LEVEL 3 COMMUNICATIONS, LLC
14 FOR A LIMITED WAIVER OF THE
15 PUBLIC UTILITY HOLDING COMPANIES
16 AND AFFILIATED INTERESTS RULES
17 (A.A.C. R14-2-201 ET SEQ.)

DOCKET NO. T-03654A-10-0002

DECISION NO. _____

ORDER

18 Open Meeting
19 March 2 and 3, 2010
20 Phoenix, Arizona

21 BY THE COMMISSION:

22 FINDINGS OF FACT

23 1. Level 3 Communications, LLC. ("Level 3 LLC" or the "Company") filed an
24 application, with the Arizona Corporation Commission ("Commission") on January 6, 2010,
25 requesting a limited waiver of the Public Utility Holding Companies and Affiliated Interests Rules,
26 Arizona Administrative Code ("A.A.C.") R12-2-801 to R12-2-806, to participate in a financing
27 arrangement.

28 2. Level 3 Financing, Inc., a subsidiary of Level 3 Communications, Inc. and the
direct parent of Level 3 LLC, proposes to issue \$640 million in Senior Notes¹ and lend the net
proceeds it receives in the offering of the notes to its subsidiary, Level 3 LLC, in return for an

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1 intercompany demand note. Level 3 LLC seeks approval for this refinancing transaction and its
2 related guarantee of the notes.

3 Background of Applicants

4 The Company in its Application represents the following:

5 3. Level 3 Financing, Inc., is a Delaware corporation with principal offices located at
6 1025 Eldorado Boulevard, Broomfield, Colorado 80021 and is a wholly owned subsidiary of Level
7 3 Communications, Inc., a Delaware corporation. Level 3 Financing, Inc. is the direct parent of
8 Level 3 LLC, and other subsidiaries, and is not a certificated telecommunications service provider
9 in Arizona or elsewhere.

10 4. Level 3 LLC, a wholly owned subsidiary of Level 3 Financing, Inc., is a Delaware
11 Limited Liability Company headquartered in Broomfield, Colorado. Level 3 LLC's customers are
12 primarily other carriers, voice over the internet ("VoIP") providers and internet service providers
13 ("ISPs"). Level 3 LLC is authorized by the Arizona Corporation Commission to provide facilities-
14 based and resold local exchange, toll and access services pursuant to Decision No. 61737 issued by
15 the Commission in Docket No. T-03654A-98-0641 on June 4, 1999.

16 The Applicant's Transaction

17 The Applicants represent the following:

18 5. Level 3 Financing proposes to issue \$640 million in Senior Notes and lend the net
19 proceeds it receives along with additional cash on hand to Level 3 LLC in return for an
20 intercompany demand note issued by Level 3 LLC in the amount of \$640 million. The funds will
21 be used to purchase previously issued notes that were issued at the rate of 12.25% and are due in
22 2013. Level 3 LLC will also issue an unsecured guarantee of the Issuer's 10% Senior Notes due
23 2018. Level 3 LLC seeks approval from the Commission for this indebtedness and the guarantee
24 of the notes issued by Level 3 Financing.

25 6. Level 3 LLC states in its application that participation in the financing arrangement
26 as a guarantor will not result in a change in Level 3 LLC's management or in its day-to-day
27 operations in Arizona nor will it adversely affect Level 3 LLC's operations in Arizona.

28 ...

1 Staff's Analysis & Recommendations

2 7. In its application, Level 3 LLC states that "The financing arrangement (the
3 proposed transaction) will enable Level 3 LLC to bring services to new markets and allow more
4 consumers to benefit from its competitive services." Subsequently, Level 3 LLC stated in
5 response to Staff's data request that "Level 3 (LLC) did not have any particular projects that are
6 Arizona specific in mind when it made this statement. Rather, Level 3's financing arrangement for
7 which it seeks approval from the Arizona Corporation Commission is intended to bolster the
8 company's ability to compete and succeed across all of its markets and with all of its product
9 offerings. Level 3 is always working to develop services that it believes consumers of
10 communications services are demanding and it also works to identify markets where its products
11 are in demand, including markets and consumers in Arizona." Staff understands, therefore, that
12 the proposed transaction will be of indirect benefit to Arizona customers in the foreseeable future.
13 Direct benefits to Arizona customers linked to the proposed transaction have yet to be determined.

14 8. Staff requested and received the following schedule detailing all financing
15 approvals obtained by Level 3 LLC from the Commission since operating authority was granted.

- 16 a. Decision No. 67810 (May 5, 2005): Approval granted for \$850 million. The
17 resulting term loan was only \$730 million. No amounts are "undrawn." This term
18 loan is no longer outstanding as it was refinanced in March 2007.
- 19 b. Decision No. 68926 (August 29, 2006): Approval granted for \$700 million. The
20 entire amount was issued. The \$700 million was comprised of \$150M
21 Libor²+6.375% Floating Rate Note³, which is fully retired now and \$550M 12.25%
22 Senior Notes, which is being refinanced.
- 23 c. Decision No. 69376 (March 22, 2007): Approval granted for \$1.5 billion. \$1.25
24 billion was issued.

25 ...

26 ² The London Interbank Offered Rate ("LIBOR") is one of the most popular figures used for determining short term
27 interest rates in the world and its rate is what borrowers with top credit are able to obtain loans at. The LIBOR is also
28 used to determine the rate that borrowers with less than perfect credit get. A very reliable borrower, such as a
29 international conglomerate with an impeccable credit rating and financial history might be able to obtain a loan with 1
30 year term at the LIBOR with an added few points, whereas a much less preferred borrower will have their rates based
31 on the LIBOR but they will be less favorable.

32 ³ Floating Rate Notes ("FRNs") are bonds that have a variable coupon, equal to a money market reference rate, like
33 LIBOR or federal funds rate, plus a spread. The spread is a rate that remains constant. Almost all FRNs have quarterly
34 coupons, i.e. they pay out interest every three months, though counter examples do exist.

1 d. Decision No. 69580 (May 21, 2007): Approval granted for \$1.4 billion for Credit
2 Agreement. Approval granted for \$1 billion for Note Issuance. All amounts
3 issued/drawn. \$1.4B refers to the term loan issued in March 2007 while the \$1B is
4 made up of \$700M of the 8.75% Notes and \$300M Libor+3.75% Floating Rate
5 Notes.

6 e. Decision No. 71176 (June 30, 2009): Approval granted for \$500 million. \$280
7 million was drawn. The \$280M is comprised of \$220M and \$60M term loan add-on
8 issued in 2009.

9 9. In response to a Staff Data Request regarding customer deposits, prepayments and
10 advances held by Level 3 LLC, the Applicant responded "Level 3 (LLC) does not hold any retail
11 customer deposits for telecommunications services in Arizona. Based on credit and payment
12 history, Level 3 (LLC) will occasionally require deposits from wholesale or enterprise customers.
13 Currently, Level 3 (LLC) has four wholesale or enterprise customers with billing addresses in
14 Arizona for which it holds a deposit associated with non-regulated services."

15 10. On February 3, 2010, Level 3 LLC provided Staff with an affidavit of publication
16 verifying public notice of its financing application. The Company published notice of its financing
17 application in The Arizona Republic on January 22, 2010. The affidavit of publication was filed
18 with the Commission's Docket Control on February 2, 2010.

19 11. The Consumer Services Section of the Commission reported that Level 3 LLC is in
20 Good Standing as of January 15, 2010.

21 12. Based on its analysis of the proposed transaction, Staff concludes that the
22 transaction would not impair the financial status of the Company, would not impair its ability to
23 attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and
24 adequate service. Staff, therefore, concludes that approval for Level 3 LLC to act as a guarantor of
25 its parent's debt will assist in providing security for the financing and is unlikely to have any effect
26 on Arizona customers of Level 3 LLC.

27 13. Staff recommends approval of the application subject to the condition that all
28 customer deposits and prepayments be excluded from encumbrance and equivalent amounts be
29 retained by Level 3 LLC.

...

14. Staff further recommends that one copy of executed security documents be filed with Docket Control, as a compliance item in this docket, within 90 days of the decision in this matter.

CONCLUSIONS OF LAW

1. Level 3 Communications, LLC is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Level 3 Communications, LLC and of the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated February 11, 2010, concludes that it is in the public interest to grant approval for Level 3 Communications, LLC to participate in the proposed financing arrangement, as discussed herein.

ORDER

IT IS THEREFORE ORDERED that the application of Level 3 Communications, LLC requesting approval to participate in the financing arrangement described in Finding of Fact 5 be and hereby is approved, as discussed herein.

IT IS FURTHER ORDERED that the application of Level 3 Communications, LLC is subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by Level 3 LLC.

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1 IT IS FURTHER ORDERED that one copy of executed security documents be filed with
2 Docket Control, as a compliance item in this docket, within 90 days of the decision in this matter.

3 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

4
5 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

6
7 CHAIRMAN

COMMISSIONER

8
9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto, set my hand and caused the official seal of
15 this Commission to be affixed at the Capitol, in the City of
16 Phoenix, this _____ day of _____, 2010.

17 _____
18 ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

19 DISSENT: _____

20
21 DISSENT: _____

22 SMO:AFF:lh\CH
23
24
25
26
27
28

1 SERVICE LIST FOR: Level 3 Communications, LLC
2 DOCKET NO. T-03654A-10-0002

3 Mr. Thomas H. Campbell
4 Mr. Michael T. Hallam
5 Lewis and Roca, LLP
6 40 North Central Avenue
7 Phoenix, Arizona 85004

8 Ms. Catherine Wang
9 Ms. Danielle C. Burt
10 Bingham McCutchen LLP
11 2020 K Street, NW
12 Washington, DC 20006

13 Mr. Greg Rogers
14 Level 3 Communications, LLC
15 1025 Eldorado Boulevard
16 Broomfield, Colorado 80021

17 Mr. Steven M. Olea
18 Director, Utilities Division
19 Arizona Corporation Commission
20 1200 West Washington Street
21 Phoenix, Arizona 85007

22 Ms. Janice M. Alward
23 Chief Counsel, Legal Division
24 Arizona Corporation Commission
25 1200 West Washington Street
26 Phoenix, Arizona 85007
27
28